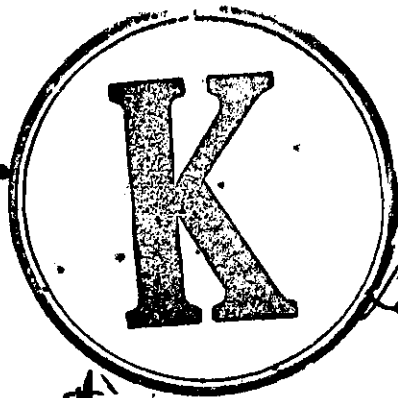


1951.



File No. 6. Sales Tax/51

Legal DEPARTMENT

A. BRANCH

5/1
5/16

Subject:—Opinions under the
Bombay Sales Tax Act, 1946.

P-33
(P)

File No. 6. Sales Tax ~~Act~~/51.

Std. Sectt. Slip 24 B &

343-A.

C O N T E N T S.

Legal Department File No. O. Sales Tax/51.

No.	R.I./ O. No.	Subject	pages.
		Hom. Sales Tax Act, 1946.	
1.	16 Conf1. 5-1-51. (Adv. General's opinion dt. 22-9-50)	Could the sale of the Bombay Dealer who delivers goods at Madras to a whole saler of that place be deemed for the purpose of consumption. Whether in such cases the sale would be taxable in Bombay.	1 - 22
2.		Opinion of Sir Alladi Krishnaswami Aiyar, M.P. on sale Tax.	23 - 40
3.	11607 23-7-51	Sec. II - Entry no 46 - Whether yarn put on reel, balls etc. of a type not suitable for use in the manufacture of cloth or hosiery would not be covered by the exemption under - and Sales therefore would be taxable -	41 - 44
4.	13532 23-8-51.	Whether it is necessary that the excise duty or any other tax to which the goods may be liable before they are sold by the dealer should be excluded from the sale price for levying the tax.	45 - 46
	14942 19-9-51.	Whether the Panarsi Cloth sold by the applicant can be deemed to fall within the meaning of the words "all silk goods" in item No. 7 of Sch. I to the Act. As the Tribunal has held that there is an ambiguity about the meaning of the words, whether the matter should be taken to the High Court. In order to remove the existing ambiguity whether it is necessary to amend entry 7.	47 - 51
6.	21471 17-10-51. 17007 25-10-51.	Whether the interpretation placed by the Bom. Sale Tax Tribunal of the words "or other place where a such food and drinks ~~are~~ served" in entry No. 10 of the Sec. 2 of the Act is too liberal	53 - 51
7.	21824 20-10-52. 17071 26-10-51.	Whether the Cotton is exempted from affixing a court fee stamp of Rs.1/- on an application for issue of a duplicate copy of the Sale Tax Registration Cer- tificate	57 - 1

r. No. R.I. /O.No. Subject pages

8.

18631
21-11-51

(1) Whether an application
for revision can be against
an order of assessment and
(ii) if so, whether it was
necessary that the amount of
tax and penalty should
have been paid before the
application could be entertained

61 - 62.

SK
L/C
9/12/46

1.

Office of the R.L.A.

The statement of the case together with a copy of the Advocate General's opinion in the matter is sent herewith.

P.M.Lad / 5-1

Remembrancer of Legal Affairs.

U.R. to F.D. No. 16 Confl. dated the 5th January 1951.

S.C. 31/5

Entry 54 in List II (state List) of the Constitution of India authorises a State to levy taxes on the sale or purchase of goods other than newspapers. Article 286 of the Constitution, however, prescribes certain restrictions as to the imposition of tax on the sale or purchase of goods and reads as follows :-

"(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

(a) outside the State

(b) " " "

state in which the goods have been sold or purchased
Explanation.- For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the state in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provides, no law of a State shall impose, or authorise the imposition of, a tax, on the sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the 31st day of March 1951.

(3) * * * * *
The Finance Department has raised doubts about the interpretation of clause (1) in particular. The Department has posed instances some of which are given below.

(a) A dealer in Bombay delivers goods at Madras to a wholesaler of that place, and the wholesaler sells to a retailer who, in turn, sells to consumers, would the sale of the Bombay dealer be deemed for the purpose of consumption?

(b) Similarly, a dealer in Bombay delivers goods to a wholesaler in Madras who, in turn,

sells to a retailer or consumer in C.P.

- (c) "X" a dealer in Bombay sells to "Y" another dealer in Bombay who, in turn, sells to "Z" a dealer in Madras and instructs "Y" to give delivery of goods directly to "Z" in Madras
- (d) "X" a dealer in Bombay sells goods to "Z" a dealer in Nagpur by delivering the goods in Bombay. "X" removes them to Nagpur for resale.

The Finance Department holds the view that in all these cases the sale would be taxable in Bombay.

2. Two possible lines of argument suggest themselves in this case. The first can be stated as follows.

(a) The power to tax is given by entry 54, and that power is not only a power for taxation on the sale but also the purchase of goods. The entry must be read together and is subject to Article 286 of the Constitution. The true scope of the entry is defined by that Article. It would not be permissible to contend that the present system of taxation has been preserved except to the extent it is curtailed by Article 286. The true inquiry should be to ascertain the scope of the power by the combined operation of the entry read with the Article. Now clause (1) of Article 286 prohibits imposition of tax on the sale or purchase of goods where such sale or purchase takes place outside the State. The Explanation does not define directly what shall be deemed to be a sale outside the State; But on the other hand says when a sale shall be deemed to have taken place in a particular State. It cannot be disputed that in order to hold that a sale has taken place in a particular State, all the three elements must combine, namely, (1) there must be actual delivery (2) that too as a direct result of sale (3) for purposes of consumption in that State, i.e. the State in which delivery has been given. The Explanation lays down when a sale can be said to have taken place in a

Particular State, and whether whatever has not taken place in that particular case would naturally be deemed to be outside that State. The fact that the Explanation also contains a non obstante clause would not make such difference, because in that clause it speaks of property passed in another State. The non obstante clause contemplates that property may have passed in a different State, but never the less the sale can be deemed to take place in the State where the delivery was given for consumption in that State. The scope of the entry in the State List must be co-extensive with jurisdiction of the State; for the constitution does not contemplate a State law with operation beyond that State; and Article 286 is useful for the purpose of defining what is the jurisdiction for purposes of this taxation. The Explanation and particularly the non obstante clause make it obvious that jurisdiction is given by virtue of the delivery for purposes of consumption in the State concerned wherever the property may have passed. In other words, the intention of Article 286 is to restrict the power of the State to tax only such sales where delivery of the goods is given in that State as a direct result of the sale and that for consumption in that State. All the three elements must unite in the State which imposes the tax, and where they do not so unite, that will not be treated as a sale in the taxing State, and, therefore, the taxing State will have no authority to tax it. It is further pointed out that if this were not the correct view, there would be no necessity for clause (1)(a) at all; for, under clause (2) imposition of tax on the sale of goods where such sale takes place in the course of inter-State trade or commerce is prohibited. Attention is invited in this connection to Explanation 2 to section 2 of the Bombay Sales Tax, Act, 1946, which says that the sale of goods which are actually in the Province.

at the time when the contract for sale is made becomes liable notwithstanding that the contract of sale is not made in the Province, such sales may not strictly come within the category of sales "in the course of inter-State trade or commerce".

(b) The other view, as I have indicated before, is that whatever has not been expressly excluded from the scope of taxation by a State must be retained with the state and the present practice need be restricted only - so far as express words to that effect have been used in only in

Article 286. The Article prohibits imposition of a tax on sales which take place outside a State. The Explanation should be used only for the purpose of deciding when a sale can be said to be outside a State, and according to this argument, sale can be said to have taken place outside the State where all the three elements units outside the taxing State. all other sales wherever delivery may have taken place must be deemed to have taken place in the State where property has passed, which is the general rule of law of sale of goods, and that rule should be modified only to the limited extent provided for by the Explanation.

3. My own inclination is towards the first view for reasons which I have sufficiently indicated and also for the further reason that this being a taxation enactment will be construed strictly in favour of the subject. The view gets further support from the spirit of the Constitution which is to preserve freedom of commerce, and in my opinion Article 286 must be read as a whole to gather its spirit. and clause (2) reinforces what the Explanation to clause (1) lays down.

4. In short the power of the State in this matter is confined only to the taxation of such sales where goods have been actually delivered in the State as a direct result of the sale and that for the purpose of consumption in that State. All other sales although they may have taken place in the State according to the principles of the

sale of goods and in the sense of property passing in the
state will no longer be taxable.

5. As the point is of great importance to the
revenues of the Bombay Province, the Advocate General is
requested to give the advice urgently.

P.H.⁺Lad

Remembrancer of Legal Affairs.

S.C. 29/5

Advocate General's Chambers,
High Court,
Bombay, September 22nd 1950.

O P I N I O N.

Entry 54 in List II (State List) of the Constitution of India authorises a levy by the State of taxes on the sale or purchase of goods. The State of Bombay has enacted Bombay Act V of 1946, known as the Bombay Sales Tax Act under the corresponding Entry in the Government of India Act. "Sale" is defined in that Act as meaning any transfer of property in goods for a cash or deferred payment or other valuable consideration, but does not include mortgage, hypothecation charge or pledge, in the charging section, section 5.

By Article 286 of the Constitution, however, certain restrictions have been prescribed as to the imposition by the Article reads as follows :-

"286, (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

(a) outside the State; or

(b) in the course of the import of the goods into, /
or export of the goods out of, the territory
of India.

Explanation :- For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as ^a have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

The drafting of this Article is unsatisfactory and leads to two different interpretations depending upon whether the Article is intended or has the effect of defining what sales are outside the State or what sales are within the state. The difficulty is caused principally by the explanation to the first part of the Article which states when a sale or purchase shall be deemed to have taken place in a State, notwithstanding that under the general law the property may have passed in another State. The prohibition is against the levy of taxes on sales or purchases outside the State, but the explanation does not purport to define what shall be deemed to be a sale outside the State, but only when a sale is deemed to (Contd)

have taken place in the State. Prima facie the effect of the explanation is that for the ~~pru~~ purposes of taxation a sale may take place in one State although the ~~pr~~ property may have passed in another. The three elements of a sale as indicated by the Article are, the passing of property by a sale, delivery in pursuance of the sale and consumption. The Article does not in terms say that a State can only tax when all the three elements coincide within the State, but merely prohibits a tax on a sale which takes place outside the State.

The ^{two} ~~tax~~ possible views may briefly be stated as follows. The first is that Entry 54 must be read with and subject to Article 286 of the Constitution, that it is not allowable to contend that an existing system of taxation is preserved except to the extent restricted by the Article. The explanation must be read as laying down what sales take place in a particular State, and that whatever has not taken place in a particular State, ~~namely~~ as so laid down would be outside the State, that notwithstanding that the property may have passed elsewhere sales take place only, where the two elements of delivery and consumption coincide, and that the effect is to give exclusive jurisdiction to impose the tax to that State in which the delivery in pursuance of the sale for consumption takes place in the same State, that any other view would lead to the conclusion that either sub-section (1) or sub-section (2) is superfluous.

The other view would treat the Article as not containing a complete provision as to taxation, but merely a prohibition creating an exception to existing powers, that it should be strictly limited to that which it purports to

say i.e.

say, i.e. it should be used only for deciding when a sale can be said to be outside the State; in other words, that a sale takes place outside the State, when all the three elements unite outside the taxing State, and that the general law as to the sale of the goods is not to be taken to be interfered with beyond that extent which the literal wording of the Article provides.

According to the second view, any State has a right to impose the tax on the sale or purchase, provided the elements of delivery and consumption do not coincide in any other State. While there is much to be said for both the points of view, I am inclined to read the Article in the more limited sense, that is to say, as creating an exception to the general law. Ordinarily a sale takes place where the property in the goods passes or is intended to pass. The delivery in pursuance of the sale may take place elsewhere and so may the consumption. There was a power to tax a sale in such circumstances. That power of taxation is taken away only in limited cases where delivery, as a direct result of the sale, actually takes place for consumption in the same State. So long as that does not happen, the power of any other State to tax is not taken away. The consequence, in my opinion, is that in the following cases the State of Bombay would be entitled to levy the sales tax :-

(a) A dealer in Bombay delivers goods, say, at Madras to a wholesaler of that place, who, in his turn, sells to a retailer, who, in his turn, sells to a consumer.

(b) a dealer in Bombay delivers goods to a wholesaler in Madras, who, in his turn, sells to a consumer in another state.

- (c) A dealer in Bombay sells to another dealer in Bombay, who, in his turn, sells to a dealer in Madras and instructs the purchaser in Bombay to give delivery direct to the Madras dealer.
- (d) A dealer in Bombay sells goods to another in Nagpur by delivering the goods in Bombay, and the goods are removed by the Nagpur dealer for resale.

As I have said, the Article is worded in a most perplexing way, and there is much to be said for the other point of view. Though I am conscious that it would not be legitimate to contend that an existing system of taxation has been preserved, except to the extent it is curtailed, which would involve the reading of the article as if it were a section of an Act designed to amend the existing legislation relating to sales tax, yet, since the Article does not create a right to tax but is so worded as to impose prohibition only, it should, I think, be read so as not to affect the law of the sale of goods or of sales tax more than strictly comes within the wording. The explanation shows that the object was not to reverse the ordinary law of contract for sale but only to create an ad hoc exception to the general law relating to the sale of goods.

Sd/

Advocate General.

OPINION OF
SIR ALLADI KRISHNASWAMI AIYAR, M.P.
 ON
SALES TAX.

The liability to Sales Tax in regard to the sales effected -- in the manner set out in the statement of facts depends upon the validity and intra vires character of explanation 2 to section 2, clause "h" of the U.P. Sales Tax Act of 1948, under the Constitution Act of 1935 read with Article 286 of the Constitution of India and the proper Interpretation of the said Act. Under the Constitution Act of 1935 a Provincial Legislature was invested with a power to levy a tax on the sale of goods, vide item 48 of the Provincial Legislature being confined to the province or part thereof any enactment passed by the Provincial Legislature cannot have any extraterritorial effect. To attract the jurisdiction of the Provincial Legislature under item 48 the legislation must be a legislation in respect of a sale within the province of U.P. If the expression "sale" in the Constitution Act has defined legal significance the PROVINCIAL LEGISLATURE cannot extend the ambit of its powers by putting its own interpretation upon the expression "sale". It is a elementary principle of constitutional law that a legislature with defined or restricted power in regard to a particular subject-matter, cannot by putting its own construction upon the subject-matter confined to it. enlarge the scope of area of its power, for, that is a matter to be left for Courts duly constituted to determine. The legislature concerned cannot widen or arrogate to itself the power which it does not possess by putting its own ^{its} construction or interpretation upon the power confined to it. It is not necessary to cite any authorities in support of the proposition. If authority were needed, reference may be made to the decision of the Australian High Court, reported in 37 Commonwealth Law Reports, page 36. In the words of Knox C.J. in the decision at page 67,

The function of interpreting the constitution is assigned by the Constitution to the judicial power of the Commonwealth. The question whether the subject of a law is within the ambit of one

or more of the powers of Legislation conferred by the Constitution on the parliament being in every case a question depending on and involving the interpretation of the Constitution. Parliament itself has no power to define the ambit of any of these powers, nor can it confer such a power on any person or tribunal except some competent organ of the judicial power. To hold otherwise, would be to empower the Parliament to disregard at will the limitation imposed by the Constitution on its power to make laws. If authority be needed for this proposition, it will be found in the opinion of the 2d Judicial Committee in 1914 Appeal Cases at Page 256". To the same effect are the observations of the Chief Justice Duff of the Canadian Supreme Court reported in 43 Supreme Court Reports at 239, affirmed on appeal by the Privy Council in 1912 Appeal Cases page 333.

The only point, therefore, is whether the expression "sale" in the Constitution Act has a defined legal significance. I am clearly of opinion that the expression has a defined legal significance, connoting the passing of property in the goods. The definition of "sale" in the Sale of Goods Act in India which was passed before the Constitution Act, the connotation of the expression "sale" in the law merchant, the sense in which it was used in the Indian Contract Act, Section 77 as it stood prior to the Sale of Goods Act and in the various Acts in England bearing upon the subject of sale of goods, all bear out the above statement. The mere fact that the goods which are subject-matter of the sale-contract are actually in U.P. at the time when the contract of sale as defined in Section 4 of the Sale of Goods Act is made of that the goods are produced or manufactured in U.P., will not make the sale of goods in either case a sale within the province unless it be that all the conditions for the passing of property in the goods are satisfied and the property in the goods passes to the vendee within the province of U.P. If in the light of the general law relating to the sale of goods, the property in the goods in any particular case does not pass within the limits of U.P., it will not be open to the U.P. Legislature to levy a tax in respect

of the sale of such goods. With due regard to the circumstances of each individual case, the point has to be determined whether the property in the goods does or does not pass within the limits of U.P. The tax is not one in respect of property but one in respect of a sale transaction. The Legislature cannot convert one species of tax into another species by the device of changing the definition of sale for the purpose of sales tax. As already observed, it is not for the Provincial Legislature to expand or give its own gloss or interpretation to the expression "sale" in the Constitution Act.

For the reasons above, mentioned I am clearly of opinion that the explanation to Section 2(h) of the U.P. sales Tax Act in so far as it seeks to expand the definition of sale including transactions in which the property in the goods does not pass within the province under the law merchant and the law relating to sale of goods is ultra vires the Provincial Legislature.

There is one other point which may also be considered in this connection, namely, the law relating to the sale of goods being included in the subject relating to contract (item No. 10 concurrent list). The Provincial Legislature would have under section 100 of the Government of India Act read with item No. 10 Concurrent Legislative List the power to effect change in the law relating the sale of goods quoad a particular province and operating within its territorial limits after complying with the terms of Section 107(2) Constitution Act/ No such change has been attempted or effected by the U.P. Provincial Legislature in regard to the Province of U.P. If any such changes were attempted, the question might arise as to, (a) whether a Provincial Legislature has any power at all to enact a law having an extra-territorial effect.

and (b) whether any such change in regard to the law of sale in U.P. would warrant a different construction of item No. 48 of the Provincial List in the Constitution Act.

The expression "sale" in the Constitution Act will have to be interpreted in the sense in which it was understood on the date the Constitution Act was passed in the light of the various consideration referred to in paragraphs supra, And the Provincial Legisla-

-ture cannot by any enactment of 1.

in the Provincial Legislative list. The question --
have to be approached solely from the point of the proper connota-
tion of the expression "sale" on the ^{date of the} Constitution Act was passed.

Whether or not a sale takes place in any particular case within the province of U.P. depends upon the passing of property in the goods within the limits of U.P. with the due regard to the relevant provisions of the Sale of Goods Act bearing upon the terms of the contract between the parties and the course of their dealings. The relevant provisions of the Sale of Goods Act bearing upon the question of the passing of property are sections 23 and 39. Under section 23, "Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state and unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied and may be given either before or after the appropriation is made.

"Where" in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract". Section 39 is complimentary to section 23, as the sections are in part materia with the corresponding sections of the English Sale of Goods Act, they may be interpreted in the light of the leading English decisions construing the corresponding sections. The effect of these decisions may be briefly summarised as follows :

(a) where goods which are the subject of a contract of sale are put on board or entertained but the bill of lading or railway receipt is taken out in the name of the seller, prima facie the seller thereby reserves the right of disposal and must be presumed to retain the property in the goods until the bill of lading or railway receipt is endorsed and handed over to the consignee as against payment.

(b) Where a bill of lading or a railway receipt is taken out in the name of the buyer and posted to the buyer's address, the

property in the goods must be taken to pass to the buyer the moment the bill of lading or the railway receipt is posted (vide *Ex parte Banner*, i.e. 2 Chancery Division 278, discussed in Benjamin of Sale at page 438, Sixth Edition), The Bill of lading or the railway receipt is regarded as the symbol of the property in the goods and the mere fact that the seller might have the right of stoppage in transit for the unpaid purchase money or that he has not received the entire purchase money does not affect the question as to the passing of property to the buyer.

(c) The cases where a bill of lading or a railway receipt, though taken out in the name of the buyer or endorsed in his favour or in blank are actually delivered to him as against payment either directly or through a bank or otherwise outside the State, stand on a different footing. In that class of cases, it has been held that there is no unconditional passing of property unless and until the Bill of lading or the railway receipt is handed over to the consignee as against payment either directly or through a banker. The decision of the Privy Council reported in 1921, 1 Appeal Cases page 486 is a direct authority for the above proposition. I would specially refer to the following passage in the judgement of Lord Sumner :

The consignors did not propose at any time to rely for payment on the mere personal credit of the consignees and they carefully kept the bills of lading in their own agent's hand until their draft was met- see 190 B.H.S. 190". Then again, "in these circumstances, what can be inferred as to the passing of the general property ? What is there to show an intention to pass that property for anything less than payment and what motive is there for such a intention ? On page 515 "No case was found in which it was held that the taking the bill of lading in the buyer's name while withholding the delivery of it before presentation and taking up of the documents would not be as an appropriation equally conditional." On page 517, referring to the decision in *Equity and Conscience* 1918 Appeal Cases 157 their Lordships observed "It is not an authority for the contention that if the bill of lading is taken in the buyer's name, this necessarily proves that

the goods shipped are appropriated to the contract and delivered ^{to 33.} ^{as buyer's} ^{bailees} with a consequent inference of the passing

of the property to the buyer on shipment. In the present case, it appears to their Lordships that the retention by the seller of the bill of lading is ~~is~~ inconsistent with an intention to pass the property. They think that it was clearly intended by the consignor to preserve the title in and to the goods until he did a further act by transferring the bill of lading". - Similar observations are contained in a later decision of the House of Lords in (1940) 3 A.E.R. 60, though the actual point to be considered there was different as in that case the bill of lading was taken in the name of the seller and endorsed in blank. The general observations of Kennedy L.J. in (1911) 1 King's Bench 934 to the effect that when a bill of lading is drawn or taken out in the name of the buyer, it will have the effect of passing property, must be taken with the later decision which directly deals with the point. In this view, I do not attach any importance to the general statement of Updsworth J (which is merely an obiter dictum) in a recent Madras case, namely (1947) I.M.L.N. 159, that a mere taking out of the bill of lading in the name of the buyer has the effect of passing property.

- (d) If the documents of title are handed outside the U.P. State against payment whether made out in the name of the customer or endorsed in blank the property passes to the buyer outside the State and there is no sale within the State so as to attract liability for tax.
- (e) If the railway receipt or the bill of lading is delivered within U.P. and the price is also paid there the fact that actual delivery is taken outside the State is immaterial."

Thus far I have proceeded on the basis of the Constitution Act of 1935 read with entry No. 48 of the provincial List and without reference to the provisions of the new Constitution. The question for consideration is what exactly is the effect of Article 286 of the Constitution read with ^{entry} No. 54 of the State List corresponding to item 48 of the provincial legislative list. In the main there is no difference between the power and jurisdiction of the State Legis-

ture under the present constitution to levy a sales tax and that of the province under the Act of 1935 subject, however, to certain exceptions. A State has the jurisdiction to levy a tax on the sale or purchase of goods within the State and not in respect of a sale outside the State. And the considerations applicable to what exactly constitute a sale within a State for the purposes of the Constitution Act of 1935 are equally applicable to the present Constitution subject to the reservations and exceptions mentioned in the Article. Under the explanation to clause 1 of the delivery of the goods takes place as a direct result, then notwithstanding the fact that under the general law relating to sale of goods the property in the goods has passed in another state, the state in which the actual delivery takes place has the power and jurisdiction to levy the sales tax. The effect of the explanation is that if under the law merchant the property in the goods passes within the limits of U.P. for the purposes of consumption there, but the goods are actually delivered outside the limits of U.P. for the purposes of consumption there, the U.P. Legislature would not have the right to levy a sales tax notwithstanding the fact that under the law merchant the property in the goods might pass within the limits of U.P. therefore the explanation for from being a circumstance in favour of taxability in U.P. will be against it whereas in this case both the conditions against taxability, namely:-

- (1) the passing of property outside the limits of the State and
- (2) the actual delivery for purposes of consumption outside the state are satisfied. It is only when there is a difference between the place where under the general law relating to sale of goods the property in the goods passes in one jurisdiction and where the actual delivery of the goods for consumption is in another jurisdiction that the explanation becomes material, and will have to be availed of by the party claiming exemption from liability.

The second clause of Article 286 has no relevancy to the facts of the present case and in this year the President has exercised his power under the proviso and has ordered that the provisions of the existing sales tax in the different states

shall continue to be operative until 31st March 1951. The meaning and scope of the terms of clause 2 of Article 286, do not, therefore, call for any consideration in the present case. Even if that clause has any application it is a provision not favouring taxability but exempting from taxability. The proviso is intended to cover cases where even in the course of transit the railway receipts or other documents of title might be transferred from one person to another and the property in the goods might be said to pass as the result of that transfer. The principle is borrowed from the state of things obtaining in America. In America a state has the power and authority to levy a tax in respect of a sale of goods within ^{its} limits but in respect of inter-state commerce the legislative power is vested in the Federal Legislature or the Congress. and the question has frequently arisen in America as to whether a sales tax levied by a state is intra-vires when it affects goods which are the subject of inter-state commerce. It has been held that the state cannot utilise its taxing power so as to interfere with the inter-state commerce clause of the Constitution and the transport of goods which are the subject of inter-state commerce. The expression "in the course of" is borrowed from judicial decisions on the subject in America.

If under the law as it stands and under the Government of India Act, 1935, the U.P. legislature has no jurisdiction or authority to levy a sale tax in respect of a sale transaction where the property passes outside the jurisdiction. The President's order of continuance cannot impart validity either to the Sales Tax Act or to the levy of the sales tax. The only effect of the President's order is that it will not attract the provisions of clause (2) of Article 286 and the rights of the parties will have to be judged with reference to the provision of the Sales Tax Act and its intra vires or ultra vires character under the Constitution of 1935.

The above resume of the law answers all the points raised in the Memorandum. In the result except in cases where the actual delivery of the goods takes place within the limits of U.P. or where the railway receipts or documents of title are endorsed over or taken out in the name of and delivered to the buyer within the

limits of U.P. the transaction will not attract the liability
of sales tax of the U.P. sales Tax Act.

37.

Even in the cases where the property in the goods passes to the buyer within the limits of U.P. by reason of the railway receipts being drawn in the name of the consignee or it endorsed over and delivered to him within the limits of U.P. if the actual delivery of the goods is outside the limits of U.P. for the purposes of consumption, (it will not attract the liability) it will not attract the liability to Sales Tax by force of the explanation to Article 286(1) of the Constitution.

Sd/-Alladi Krishnaswami Aiyer.

Legal Department.Bombay Sales Tax

Act, 1946.
Schedule II.
Entry II.

...
Yarn and Thread
Exemption of

Under section 7 sub-section (1) of the Bombay Sales Tax Act, 1946, read with entry 46 in Schedule II, thereto, no tax shall be payable in respect of the sales or supplies of "cotton Yarn" The Collector of Sales Tax, Bombay State has stated that "all cotton yarn irrespective of the number of strands in it should be considered as covered by the said entry 46 so long as it is sold in hanks or on cheeses, cones or bobbins for use in the manufacture of cloth or hosiery. But when such yarn (other than single strand yarn) is put on ~~reels~~, reels, balls tubes, cones or bobbins of a type not suitable for use in manufacture of cloth or hosiery then such sales should not be held as covered by article 46 and these sales should be treated as taxable." The F.D. considers that as entry 46 stands no conditions regarding winding of yarn as are imposed by the Collector of Sales Tax can be continued and that the Sales Tax Department would not be justified in making such distinctions in yarn ~~would be~~ of particular types of bobbins etc, suitable or unsuitable for manufacture of cloth unless "yarn put on reels, balls tubes, cones or bobbins of a type not suitable for use in the manufacture of cloth ~~and~~ or hosiery is termed as "thread or sewing thread, and then taxed under the Bombay Sales Tax Act. The R.L.A. is requested to advise whether the view of the Collector of Sales Tax that yarn put on reels, balls etc. of a type not suitable for use in the manufacture of cloth or hosiery would not be covered by the exemption under entry 46 and sales thereof would be taxable, is correct.

2. Section 6, sub-section (1)(a) of the Bombay Sales Tax Act, 1946, provides that the tax payable by a dealer under this Act shall consist of a general tax at the rate of one half of an anna in the rupee levied on his taxable turnover in respect of sales or supplies of goods other than the goods specified in Schedule I. Section 7(1) thereof provides that no tax shall be payable under this Act on the sales or supplies of goods specified in the first column of Schedule

it. Schedule I does not specify "thread" and it does not also appear in Schedule II. Therefore sales or supplies of thread would be liable to taxation under section 6(1). Entry 46 in Schedule II reads "cotton yarn" and as such the sales or supplies thereof are exempt from the tax. Neither of the terms "thereof" or "cotton Yarn" have been defined in the Act. Consequently the ordinary dictionary meaning ascribed to them will have to be looked into for ascertaining whether a particular article is yarn or thread

Yarn has been defined in the Oxford English Dictionary thus; "originally spun-fibre as of cotton, silk, wool, or flax now usually fibre spun and prepared for use in weaving, knitting or in the manufacture of sewing thread". "Thread" has been defined therein as "a fine chord composed of the fibre of the fillements of flax, cotton, wool silk etc. spun to a considerable length especially such a chord composed of one or two yarnstwisted together". It would therefore appear that "yarn" is the genus and thread is a species i.e. a yarn product produced after undergoing certain manufacturing process. Whether a particular commodity is yarn or thread is a matter of expert knowledge, and therefore the point whether yarn put on reels, balls etc. of a type, not suitable in the manufacture of cloth or hosiery would be considered as a thread, is not a point on which the R.L.A. can give any useful advice. However, it may be stated that so long as the cotton yarn does not change its category either by some manufacturing process or otherwise and cannot be identified as thread, it would continue to be exempt under entry in Schedule II, whether such yarn is put on reels, balls etc. or is not suitable for the manufacture of cloth or hosiery ; for the probable use that the commodity would be put to, has no relevance to its liability for taxation under the Bombay Sales Tax Act.

Legal Department.

Shri Modi's contention is without substance and the view taken by I.D. is correct. Sales tax is levied under section 6 of the Act only on the turnover which is defined in section 2(j) as the aggregate of the amounts of sale prices received or receivable by a dealer in respect of sale or supply of goods. In other words, it is a tax on sale prices realised by the dealer. Sale prices received or receivable by a dealer would naturally include, as the case may be, excise duty on production, import taxes, octroi or terminal taxes or any other kind of impost to which the goods concerned may be liable under any law. It is not necessary that the excise duty or any other tax or impost to which the goods may be liable before they are sold by the dealer should be excluded from the sale price for levying the tax.

sd/

Additional Secretary to Government.

U.R. to F.D. No. 13532 dated the 23rd August 1951.

S.C. 4 C. 30/5

Legal Department.

p. 53 file B.C.II. 110

In his report, the Sales Tax Inspector states :
 "The dealer (Lalchand Gopalji) has paid sales tax to this office at the rate of $\frac{1}{2}$ anna per rupee in the CI quarter whereas he should have paid sales tax at the rate of one anna per rupee because he has sold only Benarasi Silk goods. The dealer states that all Benarasi silk goods dealers have paid sales tax at the rate of $\frac{1}{2}$ anna per rupee before 1-4-49. " Net balance due to the dealer is Rs. 161-10-6." On the basis of the said report of the Sales Tax Inspector the Sales Tax payable by Shri Lalchand Gopalji for the period between 1-7-1947 and 30-6-1948 was assessed by the Sales Tax officer, C. II Ward under section 11(3) of the Bombay Sales Tax Act, 1946, and he determined the taxable turnover at Rs. 13,882-12-9 for the purposes of the general tax and at Rs. 5333-2-0 for the special tax and on the turnover so determined the general tax was assessed at Rs. 767-4-3 and the special tax at Rs. 333-7-0. Shri Lalchand preferred an appeal to the Assistant Commissioner of Sales Tax, who confirmed the order of the Sales Tax Officer dated 21-9-49 and ~~tax~~ dismissed the appeal. The assessee then made a revision application to the Collector of Sales Tax while deciding the issue whether the Benarasi cloth sold by the applicant can be deemed to fall within the meaning of the words "all silk goods" in item No. 7 of Schedule I to the Bombay Sales Tax Act, 1946, the Collector of sales Tax observes.

9-60 of
 C.II-110

85-87
 B.C.II-110

pp. 99-101 *ibid.*

" It is clear that these words are not to be read as covering only goods which are made entirely of silk (as if they were all silk goods") but the word "all " is to be understood as qualifying "silk goods" in the sense that every kind of goods which can be called "silk goods" will fall within the entry. The words "silk goods" would, in my opinion,

cloth which is made entirely of silk or artificial silk as well as mixed cloth containing not less than 50% silk or art-silk yarn and that in considering this part in the case of cloth containing cotton or silk threads covered with metallic wires of gold or silver, the weight of such gold or silver should be excluded and only the weight of the textile fibres cotton, silk and art-silk should be considered. I also consider that the entry covers the case of any cloth where the basic fabric is of silk (50 percent or more) even if these are woven or embroidered designs or other materials like gold or silver thread, irrespective of the weight of the gold and silver used in such designs embroidered or worked into the basic fabric etc."

The samples Nos. (1), (2) and (5) were not held as "silk goods" as the percentage of silk was negligible or nil as compared to the cotton. Sample No. 3 also contained less than 23 percent of silk and art-silk as compared to 30% of cotton and was, therefore, regarded as ~~the~~ cotton was ~~it~~ goods. " In the case of sample No. (4) as the cotton was less than silk in weight and as "zari" and cotton appeared in the patches of designs as an adornment of the cloth which is of silk, it was held to be "silk goods"; and as such that class of Benarasi cloth was held liable to payment of sales tax at the rate of one anna in the rupee. The order of the Assistant Commissioner of Sales Tax was modified accordingly.

In the Revision Application filed before the Sales Tax Tribunal (No. 6 of 1951), the Tribunal held :-

" Looking to the wording of the item, we are disposed to hold that it covers only goods made wholly and purely of silk. Were it to have the special meaning as contended by the opponent, there was nothing to prevent the Legislature from using suitable words.

In particular suitable words (on the lines of new item 23) to import cloth made partly of silk should have been used. In fact the word "all" comes into the item at such a place that the interpretation ought to be that it covers ~~in~~ cloth wholly made of silk etc".

The tribunal has further held that there is an ambiguity about the meaning of the words used in item No. 7 of Schedule I and in view of this ambiguity, the benefit ought to go to the applicant.

The Finance Department has referred the papers to R.L.A. for his advice whether :-

(1) the matter should be taken to the High Court, and

(2) in order to remove the existing ambiguity it is necessary to amend entry No. 7 of Schedule I to the Bombay sales Tax Act. 1946.

Legal Department.

The view taken by the Tribunal appears to be correct. If it be the intention of Government that cloth comprising a certain percentage of silk should be considered "silk" under entry 7 in Schedule I to the Bombay Sales Tax Act, 1946 the Act requires to be ~~amended~~ amended.

Sd

Additional Secretary to Government.

U.R. to F.D. No. 14942 , dated the 19th September 1951.

S.C. 30/5

21421
17-10-51

Legal Department.

This reference has been made by the Finance Department at the instance of the Collector of Sales Tax, Bombay State, Bombay for consideration whether the interpretation placed by the Bombay Sales Tax Tribunal of the words "or other place where such food and drinks are served" in entry NO. 10 OF THE Schedule 2 of the Bombay Sales Tax Act is too liberal.

S.C.

30/5

Office of the R.L.A.

From the judgment of the Sales Tax Tribunal in Revision Application Nos. 13 and 14 of 1951 it will appear that the applicants hold a lease of the stall and the table and the area leased measures 710 square feet as shown in the plan. It includes the kitchen admeasuring 150 sq. ft. tea-stall measuring the 252 sq. ft. adjacent to the platform and waiting shed on the other side of the rails admeasuring 308 sq. ft. The Tribunal has held that the counter which can hardly "accommodate 5 standing persons cannot be regarded as the only area of operation and all the place which is used or capable of being used by the passengers for standing or sitting should be regarded as the area of operation. The objection of the Collector seems to be that only the counter would be included in the expression "other place". It is difficult to justify such a construction. As the Licensed vendors the applicants would be permitted to serve refreshments any where within the Station premises and there are no words of limitation in the entry restricting the wide import of the expression "place". Further being a taxing Act, the rule applicable will be that in case of reasonable doubt the construction most beneficial to the subject is to be adopted. The reasons given by the Tribunal in support of its interpretation are proper and there is no likelihood of the High Court taking a different view. The case, therefore, is not fit for a reference under section 23 of the Bombay Sales Tax Act, 1946.

Sd/ 25-10

Remembrancer of Legal Affairs.

No. 17007 dated , 25th October 1951.

L.D.R.I.No. 21824 dated 20-10-51.

Submitted with ref. to the note of the F.D. at p. 8 ante on a ref. from the note of the C.S.D. on p. 7 ante.

For full facts of this ref. please see the letter dated 21-9-51 of the Food Commr. Ahmedabad. It may briefly be stated that six Sales Tax Registration Certificates issued by the Sales Tax Officer, *for various places in favour of the collector of Ahmedabad* Ahmedabad have been misplaced in the Head Clerk Branch of the Collector. The Collector requested the Sales Tax Officer to issue duplicate copies of the certificates but the Sales Tax Officer requires the Collector to apply for their duplicate copies by affixing a court fee stamp of Rs. 1/- for each duplicate copy. The C.S.D. has raised the point whether the Collector is exempted from such charges or he will have to affix a court fee stamp of Re. 1/- on an application for issue of a duplicate copy of a certificate of registration.

The F.D. is of the opinion that the view taken by the Sales Tax Officer is correct and the fees prescribed by Rules 52-53 of the Bombay Sales Tax *to be paid by the collector of Ahmedabad. The fpts have* Rules will have been sent to the R.L.A. by the F.D. for confirming their above view.

S.C. 31/5

Office of the R.L.A.

/Seen and returned.

The view taken by the Finance Department that the Collector will have to pay a fee of one rupee in court fee stamp under rule 53(iv) of the Bom. Sales Tax Rules upon an application for the issue of a duplicate copy of a certificate of registration under rule 7(2) is correct.

Sd/ 25-10

Remembrancer of Legal Affairs.

U.R. to F.D. No. 17071 , dated the 26th October 1951.

S.C. 30/5

The short points for consideration are :

- (1) whether an application for revision can lie against an order of assessment, and
- (2) if so, whether it was necessary that the amount of tax and penalty should have been paid before the application could be entertained.

Sections 21 and 22 of the Bombay Sales Tax Act provide for concurrent remedies by way of revision or appeal. Although it is open to Government to do so under section 22 the remedy by way of provision has not been restricted by the rules and it was open to the assessee to choose his own remedy and *that the Tribunal was right in holding that the application by way of revision was maintainable.*

As regards the payment of tax and penalty the material rule is Rule 48. Sub-Rule (1) of this Rule applies to application for revision from an order of assessment passed in appeal and as such inapplicable to the present case. Sub-rule (2) which deals with such applications for the same does not expressly provide for such payment but prescribes the form in which the application shall be made as far as may be. Since there is no specific provision in the Act or the Rules for payment of the tax and penalty before the application for revision can be entertained mere provision in the form prescribed under the Rules can of no avail as under the directions for filling in the form it is open to the party to delete whatever is not applicable.

Under these circumstances no useful purpose will be served by seeking a reference to the High Court.

Sd/ 21-11

Remembrancer of Legal Affairs.

U.R. to E.D. No. 18631 , dated the 21st November , 1951.

*501-1
ult 21/11/51*